

APPROVED: Meeting No. 36-96

ATTEST: *Paula S. Jewell*  
MAYOR AND COUNCIL  
ROCKVILLE, MARYLAND  
Meeting No. 18-95

March 27, 1995

The Mayor and Council of Rockville, Maryland, convened in General Session in the Council Chamber, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland, on March 27, 1995, at 7:33 p.m.

PRESENT

Mayor James F. Coyle

Councilmember Robert E. Dorsey

Councilmember James T. Marrinan

Councilmember Rose G. Krasnow

Councilmember Nina A. Weisbroth

In attendance: Acting City Manager Rick Kuckkahn, City Clerk Paula Jewell and City Attorney Paul Glasgow.

Re: City Manager's Report

1. The Government Finance Officers Association (GFOA) presented Rockville with the distinguished Budget Presentation Award for this fiscal year. This highest recognition in government budgeting is a significant achievement and Mr. Kuckkahn congratulated the City's Finance Department on receiving the award.

2. On March 25, the Mayor and Council kicked off the 1995 Hometown Holidays with a breakfast for the sponsors. Mr. Kuckkahn noted that plans are underway for headline entertainment by Martina McBride as well as a concert by the National Chamber Orchestra, and both performances will be followed by a synchronized laser light show. The Memorial Day ceremonies and parade will celebrate the community's rich diversity.

3. The amount of parking in Town Center has been significantly reduced with the closing of the parking garage. County employees who park in the garage were relocated to

other Town Center locations. Rockville's Community Development Department will be conducting a parking survey in the Town Center, and the information gained will be used to provide guidance to future Town Center visitors.

4. In response to the Mayor and Council's request for ways to improve City services, staff developed a proposal to retain seven City vehicles scheduled for replacement which will be used for a vehicle take-home program. The program will begin as a pilot program with the Mayor and Council's approval. An advantage include additional visibility of police cars in the neighborhoods, increased time on duty for officers, and extended life of the vehicles.

Re: Proclamation Declaring Support for  
**THE MURALS REFLECTING  
PREVENTION PROJECT**, a  
creative and collaborative project  
which engages young people in  
alcohol, tobacco and other drug  
prevention activities through the  
arts.

Proclamation No.18-95

By a unanimous vote, the Mayor and Council declared support for the Murals Reflecting Prevention Project in Rockville. Upon the request of the Mayor, Councilmember Krasnow read the Proclamation, the full text of which can be found in Proclamation File No. 7 of the Mayor and Council, which was presented to Doreen Rubin, Elementary Substance Abuse Prevention Specialist. Montgomery County Drug Free School Coordinators Barbara West from Frost Middle School and Cathryn Kaifa, College Gardens Elementary School, were also present, along with Catherine Irwin, member of the Cultural Arts Commission. Additional schools participating in the project are Cold Spring Elementary, Lakewood

Elementary, Lucy Barnsley Elementary, Maryvale Elementary, Meadow Hall Elementary, and Ritchie Park Elementary.

Re: Citizens Forum - This time is set aside to hear from any citizen who wishes to address the Mayor and Council.

1. Sima Osdoby, 2 Stevens Circle, representing Peerless Rockville presented copies of the newly published "Guide to Rockville Pike." She noted that the Pike was an important part of the City's history and a 9.5 mile route beginning in Bethesda and ending at Montgomery College, was highlighted in the Guide. Ms. Osdoby said the Guide was made possible by Eileen McGuckian, with the help of a number of sources, and it was also supported by a generous grant from Montgomery County Historic Preservation Commission. It was hoped that the Guide would foster a sense of place for the community as well as for economic development. The "Guide to Rockville Pike" is on sale for \$5.00 from the Chamber of Commerce and Peerless Rockville. Ms. Osdoby also mentioned the May 20, 1995, Progressive Dinner and House Tour and encouraged interested persons to get their reservations in for this popular fundraiser.

2. Helen Roberto, 1302 Crawford Drive reminded the Mayor and Council and Twinbrook citizens about the Twinbrook Citizens Association General Membership meeting on March 28, 1995 at 7:00 pm., in the Twinbrook Library Meeting Room.

Re: Appointments

The appointments to the Human Rights Commissions were tabled from the evening's agenda until after the Commission's retreat on April 8, 1995.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, Annie Chen Song was appointed to serve on the Planning Commission.

Re: Approval of Minutes

Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, with Mayor Coyle abstaining as he was absent from the meeting, the Minutes of Meeting No. 2A-95 (January 10, 1995 Worksession) were approved as written.

Councilmember Marrinan noted that this was the last meeting conducted with Stan Sheltra as chairperson of the Senior Citizens Commission. Mr. Marrinan noted that Mr. Sheltra had passed away in February and he said that his many contributions to the Rockville community and to senior citizens would be missed.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, with Councilmember Weisbroth abstaining as she was absent from the meeting, the Minutes from Meeting No. 2B-95 (January 16, 1995 Executive Session) were approved as written.

Upon motion of Councilmember Dorsey, duly seconded and unanimously passed, the following Consent Agenda items were approved.

Re: Consent Agenda

A. Award of Bid #72-95  
To: KPMG Peat Marwick  
Of: Washington, D.C.  
In the amount of: \$42,000 per year

For: City Audit Services

B. Receipt of financial reports  
summarizing the results of City  
operations for the period from July  
1, 1994, through January 31, 1995.

Re: Award of contract for entertainment for 1995 Hometown Holidays, Saturday evening concert, May 27, to country music artist, Martina McBride in the amount of \$20,000.

Sufficient funding is appropriated in the Recreation and Parks Department operating budget, Special Events Division.

Recreation and Parks Director Burt Hall said that plans were underway for the Hometown Holidays celebration scheduled for May 27-29. Mr. Hall outlined Martina McBride's music background and showed a video of Ms. McBride's top hits. Mr. Hall noted that staff was recommending a contract award to Martina McBride for the Saturday evening performance. Upon motion of Councilmember Krasnow, duly seconded and unanimously passed, the contract award to Martina McBride was approved.

Re: Discussion and Instructions to Staff - Exploratory Application for Residential Townhouse Development RTH94-0013, TTC/Veirs Associates.

For 40 residential townhouse units and retention of the existing dwelling at 1603 Aintree Drive.

Councilmember Weisbroth noted that there currently existed a number of development procedures to meet the Master Plan's goal to allow for creative development of residential uses, and the residential townhouse overlay was one such procedure. Because the City has development procedures available, any developer has the right to make a case for why their property might fit within the definition of a particular development procedure. Also, it has been up to the Planning Commission, the Mayor and Council, and citizens to

determine whether the case can be made. Ms. Weisbroth explained that in this application, the developer selected the RTH overlay as a method of development; however, because it was a special method of development, it required special consideration. Before the merits of the case could be discussed, it was her opinion that the Mayor and Council needed to decide whether the site met the requirements for the townhouse overlay. She said when evaluating whether the application met the ordinance, the Mayor and Council turned to the Zoning Code which outlined the tests one needed to meet when applying the townhouse overlay. In this particular application, the case was made by the developer for meeting one of the three particular tests--that the site was an isolated site predominantly bounded by non residential uses, such as parks, institutions, public uses, and private recreation uses. Ms. Weisbroth said in looking at the definition, she walked through the application and she looked at the definition of "isolated" which was a notion of "set apart from others." Based on language in the ordinance, she did not feel that the site met the test as it was not predominantly bounded by non residential uses and she could not make the finding for this case. Outside of the technical merits of the case, Ms. Weisbroth remarked that she felt that the applicant did a very thoughtful job in putting the proposal for development together; it had primary consideration for historic resources on the site, and she felt the applicant did a good job at looking at establishing the site for the houses on the property. Ms. Weisbroth said that there may have been some opportunities for creative development since there was such a strong need for housing in the City, and she said that in some ways she felt there was a lost opportunity here.

Ms. Weisbroth suggested that there might be a way for staff to clarify on a land use map, any of the residential zones where there were pieces of property open for development; where one could find more specific and direct information about other types of development that may take place.

Councilmember Krasnow said she was concerned about some charges made which she said were not fair, and she addressed these. Regarding the charge that the process used by the City was flawed, Ms. Krasnow said this was an exploratory application; no decisions had been made, and this was not the detailed site development, but simply a decision as to whether the project fit the particular piece of land. Ms. Krasnow said that some people felt that staff favored the developer, however, she said that staff did exactly what they were supposed to do. She said, as Ms. Weisbroth pointed out, the proposals must come before the Mayor and Council because they were an exception from what the Master Plan stated. The Plan, however, was just to guide the City's development and it was not a fixed regulation of what the City must do. Ms. Krasnow said staff was presented with a proposal that had many pluses to it--the property was bordered by park land; the traffic impact, despite claims to the contrary, was not truly significant; and the density was not particularly high for a townhouse development. In addition, the City often looked for ways it could enhance its resources and it was valuable when developers contributed to a project. Ms. Krasnow also said it was implied that there was something wrong with townhouses, and she said she was concerned that there was so much objection to the concept of townhouses. Ms. Krasnow said she could not vote for the project as she did not feel that the property fit with respect to the intent and purpose of the residential townhouse development procedure. It was not adjacent to downtown and it was not an isolated site, and while it was bounded in

part by park land, over half of the land was bounded by a residential neighborhood, and it was not needed as a transitional area. Ms. Krasnow added the Mayor and Council would have to look at the criteria for the townhouse overlay and make sure that staff knew which applications should be forwarded to the Mayor and Council and which should be made clear at the outset that there was little chance they would fit into the procedure. Ms. Krasnow said she felt that the developer spent a great deal of time putting forth a proposal that in the long run would have been good for Rockville.

Councilmember Marrinan said the quality of the application, especially the sensitivity of the preservation for the historic Watts Branch Miller's House, was appreciated. He said he was grateful for the Veirs family's contributions to the City and he considered the negative statements about the Veirs family unfortunate and inappropriate. Mr. Marrinan also said that the participation of so many people in the process was very good. Speaking to the merits of the case, in his opinion there was neither a need for a transitional use between single family detached homes and park land, nor was this an isolated site which was predominantly bounded by non residential uses. He said the Mayor and Council had to look at this issue strictly and technically as far as the ordinance was concerned, and he did not feel the property met the criteria for a townhouse overlay. His major concern was for the access to the property off of Aintree Drive and he felt this was inappropriate as the Master Plan clearly did not foresee such an access, and it did not foresee the use of City park land for such a use. In addition, the City's Recreation and Parks Advisory Board did not agree to the use of the park land for such a purpose. In summation, Mr. Marrinan said that he could not support the application.

Councilmember Dorsey said that part of the ordinance required that the Mayor



and Council were required to find, among other things, that the proposed development would not be detrimental to the public welfare. Mr. Dorsey said he read every concern expressed about the proposed development and he looked up the definition of "public welfare." He said that the community's response to the issue of "public welfare" held him to a position where he could not, in good conscience, support the application.

Mayor Coyle said what concerned him most was the issue raised by a number of persons about the Master Plan and that the townhouse overlay was a violation of the Master Plan. He agreed with Ms. Krasnow's comment that the citizens needed to be provided with better information about the connection between the Master Plan and the Zoning Ordinance and the City's special development procedures earlier in the process. He said in a mature community such as Rockville, where most of the opportunities for development in the future would be for in-fill development, it would be important to clarify what types of special development procedures would be appropriate for the various potential land uses. He noted another recently filed townhouse development application for town houses in a transition zone at the Twinbrook Metro was supported by the community association as they saw the benefit of having that residential transition to the single-family neighborhood. He said this is primarily what the Mayor and Council originally envisioned, although there have been a number of in-fill developments using the townhouse overlay which have worked very well throughout the City. Mayor Coyle said he was also very pleased with all the input received from the citizens, the Veirs, and the developers, and he hoped the neighborhood and the Veirs family could come up with the right development for the property.

Upon motion of Councilmember Marrinan, duly seconded and unanimously passed, staff was instructed to prepare a resolution denying the exploratory application for RTH94-0013.

Re: Discussion and Instruction to Staff -  
Review of Montgomery County's  
Capital Improvements Program  
(CIP) for FY 1996-2001 to develop  
comments for submission to  
Montgomery County Council.

Mr. Kuckkahn noted that staff was monitoring the project regarding current modernization and renovations for area schools and the Mayor and Council sent a letter to the County urging the continuation of efforts to renovate Ritchie Park Elementary School.

The Mayor and Council asked that the following issues be noted regarding the proposed CIP projects:

- o That the City be clear in its response to the County that it was not going to grant automatic use approval for any new detention center facilities.
- o Regarding any road improvements being planned, Mayor Coyle said that the County has engaged in projects on the City's borders that have significant traffic impacts on the City, and he asked that the City be given advance notice of such projects.
- o Councilmember Krasnow recommended that the City seek its share of Federal funds to be used for Advanced Transportation Management System applications on street facilities that are exclusively the City's.
- o Councilmember Marrinan noted that a new detention center was not possible under the current planning process until the year 2000; he said when the issue

of expansion of the current detention center came up, the City was approached because there was an emergency situation created by a population increase at the Center and they requested an expansion. He said the City was put in the awkward position of agreeing to what they thought was a temporary expansion. Mr. Marrinan said there may be another population explosion at the jail, and the City may be faced with the same issue to expand the facility until a new one is built. Mr. Marrinan said the City needed to encourage the County to plan for alternate arrangements other than coming to the City requesting an expansion and a use permit.

Upon motion of Councilmember Weisbroth, duly seconded and unanimously passed, staff was instructed to prepare comments on the CIP for submission to the Montgomery County Council.

Re: Adoption of Resolution to establish voluntary rent increase guidelines for 1995-1996 of 2.3%.

This Resolution establishes a maximum rate of rent increase required under Chapter 18, Article V, Section 18-194 of the "Rockville City Code" entitled "Rental Housing Data Collection and Voluntary Rent Stabilization Guidelines." This is the same rate of increase as 1994.

#### Resolution No.3-95

Chief of the Economic Development Division Edward Duffy pointed out that staff has been monitoring rent increases since 1987 and comparing them with the rental portion of the consumer price index. Mr. Duffy noted that Montgomery County Department

of Housing and Community Development was no longer mandated to provide a guideline for County landlords. However, the County does continue to review the Consumer Price Index and determined that a reasonable informal guideline for this year would be 2.3 percent. Staff was recommending that the Mayor and Council continue the 2.3 percent figure for the period April 1, 1995 through March 31, 1996. Mr. Duffy said the vacancy rate reported in the City averaged 1.8 percent, or 595 reported vacancies. Mayor Coyle said that he was concerned about the impact the Department of Housing and Urban Development's cut backs on rental assistance programs would have on the City. Many of the City's housing voucher programs allowed persons to obtain housing on the open market with some rental assistance and with Federal cut backs, and the City could see a significant impact as a result of the demands on the market.

Upon motion of Councilmember Dorsey, duly seconded and unanimously passed, Resolution No. 3-95, a copy of which can be found in Resolution Book No. 11 of the Mayor and Council, was approved.

Re: Approval of request by Cornelius M. Whalen, Trustee, to restructure payment and extend maturity date six months for the \$1.1 million promissory note pertaining to the vacant parcel located at the corner of Middle Lane and North Washington Street adjacent to the Victoria Condominium.

Mayor Coyle explained that the City entered into agreements with Mr. Whalen as part of the sale of the land on which the Victoria Condominiums and the vacant parcel were located. The payment schedule was based on the pay-down from the sale of the units in the Condominiums and the commercial building, and while it was expected that there would

be some development, none had taken place. The City had previously extended the note, previously recognizing the slow sales of the property. Mayor Coyle noted that the City would not lose anything since it would continue to receive payments on the principal, and interest on a quarterly basis at 7 percent annum.

Mayor Coyle asked whether Mr. Whalen's request for a six-month extension was reasonable under the current environment. City Attorney Glasgow said that it was likely that Mr. Whalen would need to come back prior to that time for a further extension. Mr. Glasgow further explained that the value of the collateral--the Victoria Condominium's commercial units--was not adequate to secure the obligation, and in order to protect that interest as a condition for approving the extension, the City would need to get additional collateral on another property in order to ensure that the City's interest in the deferred payments was adequately protected.

The Mayor and Council expressed hesitancy in going forth with approving the extension until the details showing that the City's funds were secure. Staff was instructed to renegotiate with Mr. Whalen and bring the request for approval back to the Mayor and Council for consideration at the next General Session.

Re: Discussion and Instructions to  
Staff - Rockville Center, Inc. (RCI)  
requests the transfer of controlling  
interest in Rockville Center from  
Delaware Credit to Essex Capital.

Mr. Kuckkahn noted that the Delaware Credit Corporation, a wholly owned subsidiary of Marine Midland Bank was the owner of one hundred percent of the stock of Rockville Center, Inc., and desired to transfer one hundred percent of the stock to Essex

Capital Partners, Ltd., a New York corporation, effective March 31, 1995. Pursuant to Section 14 of the Transition and Development Agreement, the Mayor and Council must approve the transfer of the controlling interest in RCI. Essex Capital will retain the current management team of John Cuticelli, President; Mark Troen, Vice President, along with the entire project team, including the architects, HOK; the construction company, Donohue; and the attorneys, Shulman, Rogers, Gandal, Pordy & Ecker. Mayor Coyle recognized Mr. Cuticelli who then introduced Mitch Rutter, President and principal share holder of Essex Capital Partners, Ltd. Mr. Rutter gave an overview of his real estate merchant banking firm and said that the Mayor and Council's involvement and vision for Town Center brought the project to the point where Essex could come in and complete that vision. He said his company was planning to keep the current team in place and committed to seeing through the transition and development. He hoped the Mayor and Council would extend the same confidence to Essex that was extended to the project team, and he asked that the Mayor and Council vote to approve the transfer of ownership.

Upon motion of Councilmember Dorsey, duly seconded and unanimously passed, the transfer was approved.

Re: FYI/Correspondence

1. Councilmember Marrinan noted Item #2 regarding the smoothseal street resurfacing and asked that staff provide updates on how the work was progressing.
2. Councilmember Dorsey commented on the return to service of the Montgomery County Bookmobile at Congressional Towers. Mr. Dorsey also noted that the White House Conference on Aging was holding a mini conference at the Rockville Senior Center on April 28 regarding senior citizens serving as caregivers. Anyone interested is

invited to register with the Senior Center by April 18th.

3. Councilmember Weisbroth noted that the City was making a great deal of progress in terms of architectural development for the Lincoln Park bridge. She asked that the Mayor and Council be provided with an update with drawings and ideas for the project.

4. Councilmember Weisbroth asked that staff provide details on the Landscape Award Program and when this was set to begin.

5. Councilmember Krasnow asked that staff publicize the dates for the telephone book recycling program.

6. Mayor Coyle noted the press release on the City's participation in a joint Municipal Drug Task Force. Chief Treshuck explained that three officers from Montgomery County, two from Rockville, and two from Gaithersburg would be concentrating on areas in Gaithersburg and Rockville and the areas in between both cities to combat the drug concerns. He said the program will create a high concentration in the area to ensure that displacement of the problems will move out of both areas.

Re: New Business

1. Councilmember Marrinan reported on the "Taste of the Town" fundraiser sponsored by the Jaycees. He noted that a number of people were in attendance with a variety of different food vendors and entertainment, and he complimented the Jaycees on a job well done.

2. Councilmember Weisbroth noted that County Councilmember Gail Ewing had approached Councilmember Dorsey regarding the City's support of legislation (County Bill 32-94) which would prohibit persons from standing in the roadway and soliciting funds. Mr. Glasgow advised that, if desired, the City would have to take action to ensure that the Bill

would apply in the City in order to enforce it. Staff was asked to take a look at the issue and make a recommendation to the Mayor and Council.

3. Mayor Coyle noted that both Houses passed a compromised Bill on Unfunded Mandates and this would be a significant help to State and local governments.

4. Mayor Coyle noted that on March 20, a former Kansas City Councilmember working with the Bicycle Federation of America would be visiting Rockville to see what the City was doing in the areas of pedestrian and bicycle safety.

5. Police Take Home Vehicles - The Mayor and Council generally endorsed the conceptual idea of such a policy; noting the concern that the vehicles did not leave the City. Staff was directed to go forth with developing some procedures.

Re: Next Meeting

The Mayor and Council will meet in Worksession with the Animal Matters Board, Animal Review Officials, and the Sister City Corporation on Monday, April 3, 1995. A Worksession to meet with the Rockville Arts Place is scheduled for Tuesday, April 4, 1995.

Re: Adjournment

There being no further business to come before the Mayor and Council, the meeting was adjourned at 9:35 p.m., to reconvene again in Worksession at 7:30 p.m. on April 3 and April 4, and in General Session at 7:30 p.m. on April 10, 1995.